

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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In the Matters of

Deployment of Wireline Services Offering
Advanced Telecommunications Capability

Petition of Bell Atlantic Corporation
For Relief from Barriers to Deployment of
Advanced Telecommunications Services

Petition of U S WEST Communications, Inc.
For relief from Barriers to Deployment of
Advanced Telecommunications Services

Petition of Ameritech Corporation to
Remove Barriers to Investment in
Advanced Telecommunications Technology

Petition of the Alliance for Public
Technology Requesting Issuance of Notice
Of Inquiry and Notice of Proposed
Rulemaking to Implement Section 706 of
the 1996 Telecommunications Act

Petition of the Association for Local
Telecommunications Services (ALTS) for a
Declaratory Ruling Establishing Conditions
Necessary to Promote Deployment of
Advanced Telecommunications Capability
Under Section 706 of the Telecommunications
Act of 1996

Southwestern Bell Telephone Company,
Pacific Bell, and Nevada Bell Petition for
Relief from Regulation Pursuant to Section
706 of the Telecommunications Act of 1996
and 47 U.S.C. § 160 for ADSL Infrastructure
and Service

CC Docket No. 98-147

CC Docket No. 98-11

CC Docket No. 98-26

CC Docket No. 98-32

CCB/CPD No. 98-15
RM 9244

CC Docket No. 98-78

CC Docket No. 98-91

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**COMMENTS
of the
GENERAL SERVICES ADMINISTRATION**

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September 24, 1999

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**COMMENTS
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GENERAL SERVICES ADMINISTRATION**

The General Services Administration ("GSA") submits these Comments on behalf of the customer interests of all Federal Executive Agencies ("FEAs") in response to the Commission's Public Notice ("Notice") released on September 9, 1999. In the Notice, the Commission seeks comments and replies on the nature of Digital Subscriber Line ("DSL") services and the scope of the market-opening requirements of Section 251 of the Communications Act of 1934 ("the Act").

I. INTRODUCTION

Pursuant to Section 201(a)(4) of the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. 481(a)(4), GSA is vested with the responsibility to represent the customer interests of the FEAs before Federal and state regulatory agencies. The FEAs require a wide array of interexchange and local telecommunications services throughout the nation. From their perspective as end users, the FEAs have consistently supported the Commission's efforts to bring the benefits of competitive markets to consumers of all telecommunications services.

In the Advanced Services Order, the Commission concluded that incumbent local exchange carriers ("LECs") are subject to the market-opening requirements of Section 251 of the Act, as amended by the Telecommunications Act of 1996, in their

provision of DSL services.¹ The Commission based this conclusion on the determination that DSL services were either telephone exchange services or exchange access services.

U S WEST Communications, Inc., ("U S WEST") sought review of this decision in the United States Court of Appeals for the District of Columbia Circuit. The court granted the Commission's request to develop a more complete administrative record on this question, and the Notice solicits comments to that end.

In these Comments, GSA explains that DSL services are telephone exchange services, and that all services and facilities of incumbent local exchange carriers ("LECs") are subject to Section 251 requirements.

II. DSL SERVICES ARE TELEPHONE EXCHANGE SERVICES

DSL is a technology which allows high-speed data transmission over plain old copper loops. DSL technology can be used to provide subscribers with high-speed Internet connections, and even cable television services, over the copper facilities now used to provide voice services.

The Act defines Telephone Exchange Service and Exchange Access as follows:

The term "telephone exchange service" means (A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (B) comparable service provided through a

¹ Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147 et al., Memorandum Opinion and Order and Notice of Proposed Rulemaking ("Advanced Services Order"), 13 FCC Rcd 15280 (1998).

system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.²

The term "exchange access" means the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services.³

U S WEST claims that DSL services do not fit either definition.⁴ U S WEST bases its argument on a particular use of DSL technology which connects a subscriber to an Internet Service Provider ("ISP"). Both voice and data travel simultaneously over the local loop, but then are split so that voice calls are directed to the local circuit switch and data are directed to a packet switch and thence to the ISP. U S WEST contends that DSL services are thus "information access" services, as opposed to telephone exchange services or exchange access services.

U S WEST's argument is based upon an inappropriately narrow reading of the definitions of telephone exchange services and exchange access services. As the Commission explained:

Nothing in the statutory language or legislative history limits these terms to the provision of voice, or conventional circuit-switched service. Indeed, Congress in the 1996 Act expanded the scope of the "telephone exchange service" definition to include, for the first time, "comparable service" provided by a telecommunications carrier. The plain

² Section 153 (47).

³ Section 153 (16).

⁴ U S WEST Communications, Inc. v. Federal Communications Commission, No. 98-1410 (D.C. Cir.), Brief of Petitioner, May 17, 1999 ("U S WEST Brief"), p.3.

language of the statute thus refutes any attempt to tie these statutory definitions to a particular technology.⁵

The addition of DSL technology to a local loop does not change the fact that all transmission over this loop is telephone exchange service. By its very nature, DSL services are dependent upon the local loop, whose cost is (at least partially) recovered by the "exchange service charge." The imposition of a separate, incremental "DSL Service" charge does not change this relationship. Indeed, like touch-tone service, DSL service may one day be included in the monthly exchange service charge.

The fact that U S WEST's DSL service does not utilize U S WEST's local circuit switches is a matter of engineering choice, not necessity. Indeed, U S WEST splits data traffic off now, even without DSL involvement. Conversely, some carriers plan to terminate all traffic in Asynchronous Transfer Mode ("ATM") switches, which will switch both voice and data with equal efficiency. In other words, the particular engineering technology used by U S WEST has no bearing on the nature of the service performed.

The addition of the "comparability" clause to the definition of telephone exchange services makes it clear that the Act did not intend for telephone exchange service to be dependent upon a particular pricing structure or engineering design. The local loop is the bottleneck facility in telecommunications, and transmissions over this loop are telephone exchange services.

Similarly, U S WEST's characterization of DSL services as "information access" services does not mean that they are not telephone exchange services. "Information access" services and "exchange access" services are merely subsets of telephone exchange services. Information access services terminate at an ISP, just as exchange access services terminate at a toll provider. DSL technology can be used to provide

⁵ Advanced Service Order, para. 41 (footnotes deleted).

either information access or toll access, depending upon the terminating point. In either case, however, such services depend upon local loop transmission to the subscriber, and are thus telephone exchange access services.

III. SECTION 251 (c) REQUIREMENTS ARE NOT LIMITED TO TELEPHONE EXCHANGE SERVICE OR EXCHANGE ACCESS SERVICE

The Notice also requests comments on whether the requirements of Section 251 (c) of the Act apply to all telecommunications services and facilities offered by an incumbent LEC or only to those characterized as telephone exchange service or exchange access.⁶ U S WEST contends that Section 251 (c) applies to incumbent LECs only to the extent that they are "acting" as a LEC and providing telephone exchange service or exchange access service.⁷

The plain language of the Act states that Section 251 (c) applies to incumbent LECs without qualification. All telecommunications services and facilities offered by an incumbent LEC are thus subject to the market-opening requirements of Section 251 (c).

As a result, U S WEST's DSL services would be subject to Section 251 (c) even if they were found not to be telephone exchange services or exchange access services. This point is moot, of course, since U S WEST's DSL services are telephone exchange services, as discussed above.

⁶ Notice, p. 2.

⁷ U S WEST Brief, p. 6.

IV. CONCLUSION

As a major user of telecommunications services, GSA urges the Commission to find that DSL Services are telephone exchange services and that all telecommunications services and facilities offered by an incumbent LEC are subject to the market-opening requirements of Section 251 (c) of the Act.

Respectfully submitted,

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September 24, 1999

CERTIFICATE OF SERVICE

I, MICHAEL J. ETTNER, do hereby certify that copies of the foregoing "Comments of the General Services Administration" were served this 24th day of September, 1999, by hand delivery or postage paid to the following parties.

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